



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-162, Stockbrokers and security houses.**

Date last adopted/issued: **3/15/1983**

Reviewer: **PAT MOSES**

Date review completed: **10/29/2002**

Briefly explain the subject matter of the document(s):

- **Rule 162 addresses the B&O tax reporting requirements of stockbrokers and security houses. It defines “gross income of the business” as it applies to stockbrokers and security houses.**

Type an “X” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

| YES | NO | |
|-----|----------|--|
| | X | Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request? |

If “yes,” provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

| YES | NO | |
|----------|----------|--|
| X | | Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?) |
| | X | Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document? |
| X | | Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.) |
| X | | Is the document necessary to protect or safeguard the health, welfare (budget |



| | | |
|--|--|---|
| | | levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.) |
|--|--|---|

Please explain.

- **The Gramm-Leach-Bliley Financial Services Act of 1999 passed by the federal government repealed Glass-Steagall restrictions on banks affiliating with securities firms, thereby allowing the combination of commercial banking and investment banking. It also repealed restrictions on banks affiliating with insurance companies. The rule should be revised to recognize that other financial institutions, such as banks and insurance companies, can engage in the trading of securities.**

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

| YES | NO | |
|-----|----|---|
| | X | Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| | X | Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.) |
| | X | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule? |
| | X | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule? |

(b)

| YES | NO | |
|-----|----|---|
| | | Should this interpretive or policy statement be incorporated into a rule? |
| | | Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document? |
| | | Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document? |

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.



4. Clarity and Effectiveness:

| YES | NO | |
|-----|----|--|
| X | | Is the document written and organized in a clear and concise manner? |
| X | | Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.) |
| X | | Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?) |
| X | | Do changes in industry practices warrant repealing or revising this document? |
| | X | Do administrative changes within the Department warrant repealing or revising this document? |

Please explain.

- **This rule is written in a clear and concise manner. It generally achieves the results it was intended to. However, the rule does need to be revised to address other activities commonly engaged in by stockbrokers and security houses, such as: Internet trading; hedging (see 9 WTD 107 and 9 WTD 280-29); margin interest; spreads; commodity trading; and cash management fees for cash accounts.**
- **The rule should be revised to clarify the apportionment of income derived from services provided both inside and outside the state. In part, the language inferring that the entity must maintain places of business both inside and outside the state to be entitled to apportion income is incorrect (see 19 WTD 19).**
- **The rule should also be revised to include reference to retail sales and use tax reporting, and remittance requirements for sales and/or purchases of tangible personal property. The current rule is limited to a discussion of activities subject to the service and other activities business and occupation tax.**

5. Intent and Statutory Authority:

| YES | NO | |
|-----|----|---|
| X | | Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.) |
| X | | Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.) |
| | X | Is there a need to recommend legislative changes to the statute(s) being implemented by this document? |

Please explain.

- **The department’s authority to make and publish rules is contained in RCW 82.01.060(2) and RCW 82.32.300.**



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

| YES | NO | |
|-----|----|---|
| | X | Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency? |

Please explain.

- **The subject matter and taxes in Rule 162 are the specific domain of the Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

| YES | NO | |
|-----|----|--|
| | X | Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.) |

Please explain.

- **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

| YES | NO | |
|-----|----|---|
| X | | Does the document result in equitable treatment of those required to comply with it? |
| | X | Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? |
| | X | Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community? |

Please explain.

- **By providing specific information and guidance for these activities, this rule aids taxpayers to voluntarily comply with their tax obligations. This rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).



Statute(s) Implemented: **There have been no additional implementing statutes since this rule's last review in 2000.**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **There have been no additional interpretive and/or policy statements since this rule's last review in 2000.**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **There have been no additional BTA cases since this rule's last review in 2000.**

Appeal Division Decisions (WTDs):

- **19 WTD 19 (2000) – A Washington based securities dealer is entitled to apportion its gross receipts between Washington and the numerous other states in which it markets securities through independent sales representatives that own and operate their own offices. The securities dealer has taxable nexus with those other states by entering their marketplaces to sell its services and products to customers in those states. Such out-of-state activities are more than incidental.**
- **19 WTD 739 (2000) – The usual variable annuity is primarily a securities product, sales of which are taxable under the appropriate classification of the B&O tax. However, if death benefits are more than incidental, sales of variable annuities will be subject to the provisions contained in the insurance statutes.**

Attorney General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **There have been no additional other documents since this rule's last review in 2000.**

10. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)



Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
 - Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

The following items justify revision of this rule and should be incorporated at that time:

- The rule should be revised to recognize that other institutions such as financial institutions can engage in the trading of securities.
- The rule should be revised to address other activities commonly engaged in by stockbrokers and security houses, such as: Internet trading, hedging, margin interest, spreads, commodity trading, and cash management fees for cash accounts.
- The rule should be revised to clarify the apportionment of income derived from services provided both inside and outside the state. It also should make reference to other taxes that may affect these businesses, sales and use taxes in particular.

11. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4